

CALIFORNIA ACUPUNCTURE BOARD

444 North 3rd Street, Suite 260, Sacramento, CA 95814-0226
Phone: (916) 445-3021 / FAX: (916) 445-3015
E-mail: acupuncture@dca.ca.gov Web: www.acupuncture.ca.gov

State of California
Department of Consumer Affairs
Arnold Schwarzenegger, Governor



(Approved March 10, 2005)
ACUPUNCTURE BOARD
MEETING MINUTES

June 7, 2004
Monterey Park City Hall
Monterey Park, California

Full Board
June 7, 2004

MEMBERS PRESENT

Pei Li Zhong-Fong, L.Ac., Co-Chair
Shari Asplund, Co-Chair
Michael Eng
Joan C. Chang, L.Ac.
Justin Tin

STAFF PRESENT

Marilyn Nielsen, Executive Officer
Don Chang, Legal Counsel
Janelle Wedge, Administrative Coordinator
Christie Loftin, Examination Coordinator
Nancy Molinar, Education Coordinator
Kerry Kuepper, Enforcement Coordinator
Helen Gathercole, Administrative Technician

MEMBERS ABSENT

Min M. Chang

GUEST LIST ON FILE

1. Call to Order and Establishment of a Quorum (P. Zhong-Fong, Co-Chair)

Co-Chair Pei Li Zhong-Fong called the Acupuncture Board meeting to order approximately 9:00 a.m. Roll was taken, a quorum was established.

2. CLOSED SESSION: Pursuant to Government Code Section 11126 (c) (1) and (c)(3) to discuss/take action on examination administration and disciplinary actions.

3. Co-Chair's Reports – Shari Asplund and Pei Li Zhong-Fong

Ms. Asplund reported she was invited to South Baylo University as a commencement speaker on May 1, 2004. It was a very pleasant ceremony held at a church across the street from the University, and there were four hundred guests and one hundred graduates. Ms. Asplund spoke to the graduating class representative and learned he was previously a podiatrist who decided to pursue a career in acupuncture and now is interested in teaching acupuncture. The student told Ms. Asplund that many of the students already had careers but wanted to improve their quality of life, their independence and to help people. He also suggested there was a need for more western medicine and western diagnosis technique and felt it was very important to be able to work with the western medical communities.

Ms. Zhong-Fong reported the Consumer Brochure is being revised with the new office location and new telephone numbers, new state information, and some content changes. She stated the Little Hoover Commission made some suggestions and Ms. Asplund would be reviewing and revising the brochure and sending the draft out for a final approval from the Board members, legal office and then to print. Ms. Zhong-Fong indicated there were two Continuing Education Review Panel meetings conducted April 23, 2004 and May 7, 2004 and that she would be giving her report later in the meeting.

4. Executive Officer's Report – Marilyn Nielsen

Ms. Nielsen reported the Board's consumer brochure is in the final stages of revising. Comments the Board received on the 2002 version were taken into consideration when editing the language. The new colors will be teal and light tan and should be ready to distribute to the public within the next two months. Ms. Nielsen reminded the members the month of June 2004 is the end of the State fiscal year and to submit any outstanding travel claims. She reported she attended the Federation of Acupuncture and Oriental Medicine Regulatory Agencies (FAOMRA) spring meeting April 29-30, 2004 in Southern California. Delegates from Maryland, Idaho, New Mexico, Arizona, Florida and Virginia also attended. Ms. Nielsen indicated, since California was absent from the FAOMRA meetings in 2003, there was a lot of interest in what has been going on in California and it allowed her an opportunity to set the record straight on many issues the Board has been going through. Ms. Nielsen indicated she was re-elected to the Board of Directors and believes it is very important that California attend the national meetings and to participate and be active. Ms. Nielsen states the Accreditation Commission for Acupuncture & Oriental Medicine's (ACAOM) Executive Director, Dort Bigg, reported to the FAOMRA Board that ACAOM has been undergoing organizational changes and streamlining offices and processes. The Commission has appointed three new commissioners to replace the three that were asked to resign. Mr. Bigg said the rumors about the resignation of the three commissioners are unfounded and ACAOM will be responding publicly to the accusations. Ms. Nielsen indicated with the restructuring, the California office has been closed and Penelope Ward is leaving ACAOM. Ms. Ward has been a very important part of the Board's interaction regarding the schools. Ms. Nielsen also reported that DCA has a new Director, Charlene Zettel, a former Assemblywoman, and a new Chief Deputy Director, Sherry Mehl, formally the Executive Officer of the Acupuncture Board followed by eight years for the Board of Behavioral Sciences. This will be a good team with both having knowledge of the department's administration and boards.

5. Approval of February 24, 2004 Meeting Minutes

**MICHAEL ENG MOVED AND JOAN CHANG SECONDED THE MOTION TO APPROVE THE FEBRUARY 24, 2004 MINUTES AS AMENDED.
PASSED UNANIMOUSLY**

6. Enforcement Business – (Discussion/Action)

a. Enforcement Case Report

Ms. Kuepper indicated since July 1, 2003, 142 new complaints have been filed with the Board, 2 of which are Reinstatement Petitions, which do not qualify as "new" complaints. Twenty-six formal investigations are pending with Division of Investigation, and there are 36 open disciplinary cases and 14 open probation cases. The highest percentage by category still remains unprofessional conduct and criminal charges and convictions.

7. Education Business - (Discussion/Action)

a. New England School of Acupuncture, Watertown, Massachusetts- Evelyn Fowler, President

Evelyn Fowler, President, reported the New England School of Acupuncture (NESA) was aware of the California Acupuncture curriculum increase for 2005 and NESA would be including the increase into their curriculum effective July 2004, which is a 3022 hour program with the dual program completing 3180 hours. Ms. Fowler stated the students previously were learning herbs separate from the acupuncture program, but NESA has integrated acupuncture and herbal medicine curriculum and clinical training at a number of their clinics. Ms. Zhong-Fong indicated the Board had concerns that some students had not completed California curriculum requirements and asked whether NESA has a

process in place to track and verify their internship hours. Ms. Nielsen stated that part of the process for the Board to approve the exam applicants is that the schools are required to submit a 'curriculum requirement form' for the students, which demonstrates how the students program complies with the State curriculum requirements. Ms. Fowler indicated the school tracks at what location the students complete their clinical practice hours and the log could expand to include the clinical hours. At the present time, not every student has done the integrated program, but as the school moves forward all the students will have completed the integrated program. NESAs will keep a list of students completing their program before the program was integrated.

PEI LI ZHONG-FONG MOVED AND SHARI ASPLUND SECONDED THE MOTION TO REMOVE THE CONDITIONAL APPROVAL FOR NEW ENGLAND SCHOOL OF ACUPUNCTURE (NESA) MASTERS OF ACUPUNCTURE AND ORIENTAL MEDICINE (MAOM) PROGRAM AND GRANT "FULL APPROVAL" TO THE SCHOOL. PASSED UNANIMOUSLY

In conclusion, Ms. Fowler indicated she would send the Board the four documents requested: 1) A list of NESAs offsite clinics containing a brief description of each site and their locations; 2) A copy of the Bio-medical Emergency examination; 3) An evaluation form clarifying the details of how and when California requirements are met; and 4) A list of the total courses offered under theory, Chinese herbs, Western sciences, clinic, etc. and the total credits NESAs students' earn.

b. China International Medical University, Los Angeles, CA

Ms. Zhong-Fong indicated at the December 9, 2003 Board meeting the Board authorized the Executive Officer to perform a site visit of China International Medical University (CIMU) to determine current status of the school and if necessary commence legal proceedings to withdraw California Acupuncture Board approval. Ms. Nielsen reported that she and Ms. Molinar conducted a site visit May 12, 2004 and found that since the last site visit on May 30, 2003, which was conducted by Ms. Zhong-Fong and Ms. Molinar, there had been no changes or improvements made to the school. The Board's same concerns still exist and nothing has changed since the original site visit on November 19, 2002. Don Chang, Legal Counsel, stated the next procedure would be to refer the matter to the Attorney General's Office, who will prepare a written statement of deficiencies and schedule an administrative hearing before an Administrative Law Judge (ALJ). The school will have an opportunity to present their case at the hearing, and then a decision will be issued and the Board will consider that decision.

MICHAEL ENG MOVED AND JUSTIN TIN SECONDED THE MOTION TO AUTHORIZE THE EXECUTIVE OFFICER TO START THE LEGAL PROCEEDINGS THROUGH THE ATTORNEY GENERAL'S OFFICE TO WITHDRAW THE ACUPUNCTURE BOARD'S APPROVAL OF CHINA INTERNATIONAL MEDICAL UNIVERSITY (CIMU). PASSED UNANIMOUSLY

c. School Applications and Pending School Site Visits

Ms. Nielsen reported, of the five pending site visits, Nobel University and Stanton University have not met the minimal condition requirements, therefore the site visits were cancelled until such time as they are ready for the Board's review. Two of the schools are new and the site visit dates are still

pending. The Board authorized the Executive Officer to utilize a non-Board professional member to perform the clinic review on the Academy for Five Elements in Hallandale, Florida.

- d. National Oriental Medicine Accreditation Agency (NOMAA) – Presentation by Ted Priebe, OMD, QME, LAc, President, Deke Kendall, L.Ac., OMD, Ph.D., and Gerald Patton, Ph.D.**
Ted Priebe, President of the National Oriental Medicine Accreditation Agency (NOMAA) introduced Dr. D. E. Kendall, consultant and Gerald Patton, Ph.D., Director to NOMAA's Advisory Board. Mr. Priebe explained the NOMAA entry-level professional Doctor of Oriental Medicine (O.M.D.) 4,000-hour degree program consists of 2,500 hours didactic work and 1,500 of clinical clerkship. Mr. Priebe stated presently there are licensed practitioners that have completed a Master's degree in Oriental medicine or have been in Oriental medical practice before schools offered a master's degree, and the present training and experience levels of these individuals qualify them as advance standing candidates for the NOMAA O.M.D. degree program.

8. Examination Business – (Discussion/Action)

a. July 30, 2004 Licensing Examination

Christie Loftin, Examination Coordinator, reported a total of 521 candidates have paid their fees and of those, 390 are first time approved examinees and 131 re-takers, with a possibility of an additional 100 candidates. Ms. Loftin indicated out of the total candidates, 315 are English, 113 are Korean and 93 Chinese. Ms. Nielsen informed the Board that OER has scheduled Subject Matter Experts (SME's) panels for June through September to review the licensing exam book reference list and herb list for possible expansion.

9. Administrative Business – (Discussion/Action)

a. Rulemaking File Amending Title 16, California Code of Regulations (California Regulatory Notice Register #Z-03-0520-10) Sections 1399.415, 1399.416 and 1399.436, and Adding Sections 1399.434 and 1399.435.

Ms. Nielsen reported the final curriculum rulemaking package to implement the 3,000 hours program requirement of Business & Professions Code Section 4939 was filed with the Department of Consumer Affairs (DCA) on May 5, 2004. DCA has projected they will have their full review completed by June 10, 2004.

b. Sunset Review – SB 136, Extending Sunset Date to January 1, 2007

Ms. Nielsen indicated SB 136 was introduced to rectify the error made last year in SB 1950 when the year of sunset was incorrect by one full year. She indicated this is formality only, that if the year had not been corrected the Board would have sunsetted prior going through the next sunset review process, however it doesn't change the date of September 1, 2004 that the Board's sunset report is due to the Joint Legislative Sunset Review Committee.

c. Business and Professions Code Section 4934.1 – Little Hoover Commission's Study and Evaluation Requirements on the Scope of Practice and Educational Requirements of an Acupuncturist, School Approval Process and Use of National Exam.

Ms. Nielsen reported the University of San Francisco's report was due to the Little Hoover Commission (LHC) at the end of May 2004, but LHC has indicated they haven't received it yet. LHC has continued to request documents and information from the Board, which the Board has provided upon request. LHC's report to Joint Legislative Sunset Review Committee is also due September 1, 2004.

d. Business and Professions Code Section 4934.2 – Study and Evaluation Requirements of the Acupuncture Board Regarding Continuing Education:

1. CE Panel Draft Guidelines and Policies

The Board expressed concerns if the CE course is taught in a foreign language and translated that only 50 percent credit should be allowed. However, on a case-by-case review, a higher percentage credit may be approved if translation is done simultaneously with no loss of course time due to the translation. The other discussions related to advertisements for CE courses that

must provide the following information: a level of difficulty, disclosure of products, and course titles that should reflect course content and not contain marketing language.

2. CE Committee Report/Recommendation (Members: P.Zhong-Fong & J.Chang)

Ms. Zhong-Fong reviewed the June 6, 2004 Continuing Education Sub-committee Report and stated two Continuing Education Review Panel meetings were conducted on April 23, 2004 and May 7, 2004. The members consisted of herself, Michael Dunn, Marguerite Hung, Maret Kunze, Linda Jordan, Patricia Young, Jeanne Tumanjan, Joan Chang, Andrew Wu, Ming Shi and Qing Chen. The panel reviewed and discussed the current Board CE regulations, currently approved and pending CE courses, and DCA's policy regarding CE, in addition to the results of the Board's recent CE survey and minutes of the CE provider focus group conducted on August 8, 2002. The discussion was very thorough, focused, and productive. Information regarding policies and regulations of other licensing boards were presented and also discussed. A summary of the recommendations follow: 1) CE course credits are classified into 2 categories, plus 1 mandated subject. 2) CE credits will not be accepted for retaking of courses previously taken within 2 years. 3) CE course instructor's experience in the subject area is increased from 1 year to 5 years, consistent with the requirement for instructors under the new 3000-hour curriculum. 4) If the CE course is taught in a foreign language with translation, only 50% credit is allowed. However, on a case-by-case review, a higher percentage credit may be approved if translation is done simultaneously with no loss of course time due to the translation. 5) Maximum credits allowed per day are 8 hours. 6) Advertisements for CE courses must provide the following information, a level of difficulty, disclosure of products, and course titles shall reflect course content and not contain marketing language. 7) Board will continue to randomly audit 10% of the licensees for CE compliance. 8) Make filing of complaints and feedback easier via online CE course complaint form and onsite CE course feedback forms directly mailed to the Board. 9) Investigation of complaints related to CE courses may include but not be limited to the auditing of the course by CAB staff, subject matter expert, auditing pool, or other consultants, and may also include a survey of all attendees of course, request for video tape of the course for review, etc. 10) The CE panel, along with the provider focus group, both agree that 50% of CE credits may be allowed for distant learning CE courses. Each distant learning course shall require attendees to pass a written examination (of at least 10 questions) to receive credit. Hands-on diagnostic or treatment techniques are not allowed for distant learning credits. However, the committee feels that there needs to be more work done in regard to quality control and regulation of distant learning courses. 11) All panel members agree that CE providers should be subject to enforcement action for unethical, fraudulent or unprofessional conduct.

Ms. Nielsen indicated the draft regulatory language presented to the Board was based on panel and staff's recommendations and will be reviewed by legal and then returned to the Board for final approval at the next Board meeting in August 2004.

**MICHAEL ENG MOVED AND SHARI ASPLUND
SECONDED THE MOTION TO ADOPT THE CONTINUING
EDUCATION SUBCOMMITTEE'S JUNE 6, 2004 REPORT
AND RECOMMENDATIONS, AS AMENDED, REGARDING
CONTINUING EDUCATION REQUIREMENTS FOR
LICENSEES. THIS RECOMMENDATION WILL BE
PRESENTED IN THE BOARD'S SEPTEMBER 1, 2004
REPORT TO THE JOINT LEGISLATIVE SUNSET REVIEW
COMMITTEE.
PASSED UNANIMOUSLY**

e. SB 899 – Workers Compensation Reform

Brian Fennen, L.Ac., QME, OBT, reported Senate Bill 899, authored by Senator Poochigian reforming Workers' Compensation, was signed into law on April 18, 2004 by Governor Arnold Schwarzenegger and went into effect immediately. Mr. Fennen indicates last year's SB 228 created concerns by referencing the American College of Occupational and Environmental Medicine's (ACOEM) Occupational Medicine Practice Guidelines. SB 899 adds multiple references to these guidelines. The Administrative Director (AD) of the Division of Workers Compensation will be required to adopt new medical treatment utilization schedule, utilizing "evidence-based, peer-reviewed, nationally recognized standards of care" at a minimum, the frequency, duration, intensity, and appropriateness of all treatment procedures and modalities commonly performed in workers compensation. Mr. Fennen stated there has not been a thorough study of acupuncture and acupuncturists are getting treatment denials based upon the ACOEM practice guidelines, not just from Workers' Compensation but from other insurance carriers.

f. Budget Updates

1. Fiscal Year 2003/2004 – 4th Quarter Projections

Ms. Nielsen reported on the Acupuncture Board budget expenditure for fiscal year 2003/2004 as of April 30, 2004. She noted the facilities operations were higher than projected, this was due to an error in accounting that should have applied the construction costs on the new office against last year's budget, but was instead applied to this fiscal year; however, this is not a concern as the Board has enough funds in FY 2003/2004 to cover the expenses. Ms. Nielsen stated the Attorney General expense is almost exhausted and the cost will be monitored closely till the end of the fiscal year to ensure we don't over expend in that line item.

2. Attorney General's Rate Increase Effective April 1, 2004

Ms. Nielsen stated the Board was notified that the Attorney General (AG) was implementing a rate increase from \$112/hr to \$132/hr statewide and paralegal rates from \$53/hr to \$91/hr effective April 1, 2004. An assessment was performed to determine how this increase would impact the Board's fund condition and fourth quarter projections, and the overall budget was reviewed to determine if the Board could absorb the increase. To fund the Fiscal Year 2004/2005 cost of the rate increases, the Department of Finance has approved an additional \$46,877 increase in the Boards Attorney General budget. Ms. Nielsen also informed the Board Attorney General rates would increase even further in 2004/2005, from \$132/hr to \$139/hr for attorney services effective July 1, 2004. The Department of Finance indicated a new 2004/2005 Budget Bill Control Section is being proposed to address these latest Attorney General's rate increases.

3. Governor's May Budget Revisions

Ms. Nielsen indicated based on the analysis, the Department of Finance (DOF) as part of the May 2004 Revision approved a total of \$3,597,000 in additional special fund expenditure authority for 23 of the Department's 40 boards/bureaus and programs. The Acupuncture Board will receive a \$46,877 increase for Fiscal Year 2004/2005 to fund the AG's rate increase.

4. 2004/2005 BCP-Attorney General Augmentation – Budget Hearings

Ms. Nielsen indicated the Board's budget passed the Senate and Assembly Budget hearings and will be sent to the Governor for final approval. This budget included the Attorney General's funding of \$86,000 requested through the BCP process.

5. 2005/2006 Budget Change Proposals

Enforcement Office Technician/Office Assistant Chinese Translator

Ms. Nielsen reported the Board submitted two BCP's for Fiscal Year 2004/2005. One was a BCP to augment the 2005/2006 budget to hire a fulltime Office Technician (OT) for the enforcement program. The second BCP was for an Office Assistant (OA) to perform the review of the foreign exam applicants and act as a Chinese translator. Ms. Nielsen reminded the Board that the Office Assistant/Chinese Bilingual position was approved for 2002/2003, however, due to the hiring

freeze the Board was unable to fill the position and lost it because of being vacant for more than 6 months. Ms. Nielsen requested the Board approve the BCP's for 2005/2006.

**SHARI ASPLUND MOVED AND MICHAEL ENG
SECONDED THE MOTION TO APPROVE THE 2005/2006
BUDGET CHANGE PROPOSALS.
PASSED UNANIMOUSLY**

g. Adopt 2004-2005 Strategic Plan

The Board reviewed the Strategic Plan and made minor revisions.

**MICHAEL ENG MOVED AND SHARI ASPLUND
SECONDED THE MOTION TO ADOPT THE STRATEGIC
PLAN AS AMENDED.
PASSED UNANIMOUSLY**

10. Public Comment Period:

Matthew Bauer, L.Ac., asked the Board if they had received his letter dated May 3, 2004. This letter is in a response to a letter Ms. Nielsen sent to him dated April 2004. Mr. Bauer indicated he is still unsatisfied with the response from the Board. Mr. Bauer indicated he has listened to the December 9, 2003 Board meeting tapes and heard his name mentioned. He stated that the Board's letter to the Little Hoover Commission complained about the members of the scope of practice panel. Mr. Bauer also explained, he is not on the Board of Directors of the AAOM, but he is a member of the Alliance and he believed the Board perceived him to have national special interests. Mr. Bauer indicated he strives to maintain a neutral position between the national and state organizations.

Ms. Asplund stated to clarify for the record, on behalf of the Board, as far as we know Matthew Bauer is currently only affiliated nationally with American Association of Oriental Medicine (AAOM) as a member, and he is not one of the individuals that were referred to in the Board's December 18, 2003 letter to the Little Hoover Commission. Ms. Asplund stated, since Mr. Bauer seems to be very worried about this possible reference to national ties, Ms. Asplund expressed that the Board hoped this clarification would allay his fears.

Brian Fennen, CAOMA, commented on the letter in Acupuncture Today, reading that the Chair Pei Li Zhong-Fong was the only representative of the profession serving on the panel. Mr. Fennen indicated CAOMA have been meeting with National Oriental Medicine Accreditation Agency (NOMAA), and CAOMA has formally endorsed NOMAA education curriculum standards as meeting or exceeding CAOMA expectations. In addition, NOMAA has introduced an interim doctorate for transitioning current practitioners who want to get the OMD. Mr. Fennen gave a brief history of the 1908 Flexner Report's publication and the impact of its review on the fate of medical schools in this country, and how medical schools came to adopt the program. Mr. Fennen informed the Board CAOMA has been actively involved in the accreditation process.

Hugh Morrison, L.Ac., Advisory Board for NOMAA, on staff with Life University, stated the sixty units at the Baccalaureate level prerequisite requirement to enter an approved master program needs to be addressed.

Marilyn Allen, American Acupuncture Council, expressed concerns about requirements or specific number of hours in Chinese medicine where it can't be flexible enough to complete the requirement. She also stated, she does agree that ethics should be included, because of the increase in enforcement cases and the cost continues to increase. Ms. Allen indicated companies are behind the products being

presented at seminars and this should be of some concern. She also indicated, when regulations change, the profession can get confused, and wondered how is the profession notified? She also believes the school fees are reasonable and Ms. Allen commended the Board.

Ta Fang Chen, CAMA, had comments on examination requirements.

Neal Miller, Acupuncture & Integrated Medical Specialists (AIMS), stated AIMS is a new non-profit trade association and will be introduced to the Board formally at a later date. Mr. Miller had a few comments concerning continuing education and felt that the Board should not only look at the subject matter, but some of the providers background, checking their credentials. Mr. Miller expressed concern that LHC was derelict in their duty to examine the acupuncture's scope of practice and said they would not address workers compensation, he believes the Board should be responsible to respond to their comments.

11. Adjournment

Acupuncture Board meeting adjourned at approximately 2:15 p.m.